

Exhibit M:

Cited Testimony of
Former Oracle Customers

1 Can you explain to the jury what that entailed?

2 A. Yeah. I mean, it could be a variety of things, but
3 always it was a legal person on the customer side going
4 through our contract to determine that they agreed with the
5 terms in the contract and it was sufficient for them.

6 Also, as part of the legal review, they very
7 often were going through their own contracts to ensure that
8 their contracts entitled and enabled them to become a
9 customer of ours.

10 Q. On average, how long does the process that you've
11 described to us take from the initial call with a client
12 until that client signs up with Rimini Street?

13 A. It's somewhat product dependent, but I would say on
14 average three to six months.

15 Q. And why does it take so long?

16 A. Well, typically customers do a lot of due diligence,
17 and it's a long cycle. They don't just sign a contract. I
18 wish they did, but they don't.

19 And they ask a lot of questions and perform a
20 lot of due diligence. And then the legal negotiations
21 often take multiple weeks as well.

22 Q. You were asked by Oracle's counsel about your
23 understanding based on discussions with customers and your
24 salespeople that when customers don't choose Rimini, they
25 usually choose Oracle. Do you recall that line of

1 testimony?

2 A. I do, yes.

3 Q. Do you also have an understanding based on your
4 discussions with your customers and your salespeople why
5 people are choosing to leave Oracle?

6 A. Sure.

7 Q. And what is that understanding?

8 MR. ISAACSON: Objection, Your Honor.

9 THE COURT: Sustained.

10 BY MS. CHUANG:

11 Q. During the sales process or the sales cycle we've
12 been talking about, if a customer asks whether a certain
13 practice is permissible under their license agreement with
14 Oracle, what would be your typical response?

15 A. My typical response would be that they would have to
16 go back to their legal team to review their contract and
17 make that determination.

18 Q. And have there been instances, after you were hired
19 until December of 2011, where you've seen that a client
20 asks for Rimini's opinion and Rimini has responded?

21 A. I have seen that, yes.

22 Q. Can you give the jury an estimate of how many times
23 that you've personally observed that happening from the
24 time you came onboard to the end of 2011?

25 A. Where an opinion was given?

1 Q. Right.

2 A. Less than 10.

3 Q. Less than 10?

4 A. Yes.

5 Q. Have you ever personally advised a potential client
6 about any provision in their underlying contract with
7 Oracle?

8 A. No, I have not.

9 Q. As part of your duties as senior vice-president of
10 sales, would it be part of your responsibility to
11 understand why customers choose to come to Rimini?

12 A. Sure. I think that -- sure, yes.

13 Q. And I think you testified that you need to
14 understand the competition; right?

15 A. Yes.

16 Q. Are you personally aware of any instances where a
17 customer has chose Rimini's services because Rimini hosted
18 that client's software on its servers?

19 A. Can you repeat that again, please?

20 Q. Sure. Are you personally aware of any instances
21 where a customer signed on with Rimini, chose Rimini Street
22 because Rimini Street hosted that client's software on its
23 servers?

24 MR. ISAACSON: Objection, Your Honor.

25 THE COURT: Sustained.

1 BY MS. CHUANG:

2 Q. Based on your experience, Mr. Maddock, what are some
3 of the reasons that clients choose Rimini Street?

4 MR. ISAACSON: Objection, Your Honor.

5 THE COURT: Overruled.

6 THE WITNESS: There's a variety of reasons. I
7 mean, the cost savings is certainly one of them, also
8 dissatisfaction with the support levels that they're
9 receiving at Oracle, and, in many cases, we hear that they
10 don't like doing business with Oracle. They don't like the
11 way that they've been treated.

12 MS. CHUANG: No further questions.

13 THE COURT: Redirect examination?

14 REDIRECT EXAMINATION

15 BY MR. ISAACSON:

16 Q. A couple minor points, Mr. Maddock.

17 I think you referred to an average
18 three-and-a-half-minute response time to phone calls for
19 service; is that right?

20 A. That's what our delivery team was averaging,
21 certainly in the earlier years, from what I remember, yes.

22 Q. All right. And the vast majority of inquiries,
23 however, that you get for support are not through phone
24 calls, those would be -- those would come through email or
25 web requests; right?

1 A. I actually don't know that for sure, no.

2 Q. You don't know one way or the other how -- whether
3 customers are principally dealing with you for support
4 through the phone or through the web?

5 A. No, I don't.

6 Q. Okay. Now, you've talked with your counsel and you
7 talked with me about when technical questions would come
8 up, you would refer the customer to someone more technical.
9 Do you remember that generally?

10 A. Yes.

11 Q. Okay. Now, for Siebel during this 2008 through 2011
12 period, that would principally have been Mr. Chiu?

13 A. That's correct, yes.

14 Q. Dennis Chiu?

15 A. Dennis Chiu, yes.

16 Q. And for JD Edwards, that would be Mr. Grigsby?

17 A. That's correct, or some -- or someone in his
18 organization.

19 Q. All right. And just in terms of your background, as
20 I understand it you actually managed software
21 implementation. How many years did you do that?

22 A. I was at Anderson for four or five years. Five
23 years.

24 Q. Did you manage software implementation in any other
25 part of your career?

1 A. No, I did not.

2 Q. And after managing software implementation for four
3 or five years, I guess by 1998 you were talking to
4 PeopleSoft customers about support; is that right?

5 A. I mean, that's what I did when I got to PeopleSoft.
6 That's where I learned the support business, yes.

7 Q. Right. And it is true that in terms -- during the
8 period you've been with the company, most inquiries from
9 customers go to your sales staff and not to you directly;
10 correct?

11 A. Most inquiries during the sales process?

12 Q. Yes, from customers?

13 A. That's correct, yes.

14 Q. Okay. And when you write FAQs, those are for
15 frequently asked questions, not for infrequently asked
16 questions; correct?

17 A. They are for questions that I would say come up in
18 10 percent of the conversations or more.

19 Q. The actual title is Frequently Asked Questions;
20 right?

21 A. That's correct.

22 Q. And you're not aware of any document in this case
23 that says that the questions we are talking about says
24 these are infrequently asked?

25 A. No, I'm not.

1 Q. Okay. Your counsel asked you about how your sales
2 went up after Oracle filed this lawsuit in January of 2010.
3 Do you remember that?

4 A. I remember -- yeah, I remember her asking what
5 happened to the numbers, yes.

6 Q. Okay. After Oracle filed this lawsuit, Rimini
7 continued to have as its standard messaging to clients that
8 Rimini did not share software between customers. Isn't
9 that correct?

10 A. Yes, it is.

11 Q. Okay. And after Oracle filed this lawsuit out there
12 in the marketplace, Rimini's standard messages continued to
13 be that they were obeying the customer's license agreement,
14 that they were abiding by it?

15 A. Yes.

16 Q. Okay. And after Oracle filed this lawsuit, it
17 was -- Rimini's standard messaging continued to be that
18 they didn't use one customer's development environment for
19 another; correct?

20 A. Yes.

21 Q. Okay. Sir -- and after this lawsuit was filed,
22 generally you kept saying that your business was legal and
23 you had not violated Oracle's copyrights; correct?

24 A. That's correct.

25 Q. And those frequently asked questions about your

1 below the historical rate; correct?

2 A. That's correct.

3 Q. Okay. And so it would be fair to say, can we talk
4 about the historical rate as being about 95 percent?

5 A. And that was the -- that's how I intended to convey
6 that, yes.

7 Q. Yes, sir.

8 And so, just so we have a clear record, in your
9 opinion, about 95 percent of Rimini's customers would have
10 stayed with Oracle but for the promise of vendor-level
11 support at a significant discount by Rimini; correct?

12 A. Well, again, precisely what I was saying was that I
13 felt that they would renew it at the historic renewal rates
14 which I tried to summarize or characterize succinctly as
15 approximately 95 percent.

16 Q. Yes, sir.

17 In connection with that analysis, you did not
18 conduct any mathematical or statistical analysis regarding
19 whether Rimini's clients would have renewed at Oracle's
20 historical retention rate, did you?

21 A. No, I did not.

22 Q. Okay. You will agree with me, sir, if the
23 historical retention rate is about 95 percent, that means
24 that 5 percent of the customers leave Oracle every year;
25 correct?

1 A. Yes, from arithmetic, yes, I would agree with that.

2 Q. All right. So in the real world we know that
3 Rimini's customers are not part of the 95 percent that
4 stayed with Oracle, they're part of the 5 percent that
5 left; correct?

6 A. Yes.

7 Q. Okay. So let's talk about that 5 percent that left,
8 or that historically leaves.

9 Would you agree with me, sir, that historically
10 customers with certain characteristics are more likely to
11 leave vendor support?

12 A. No, I don't agree with that.

13 Q. Well, let's talk about what you said in your report.

14 Your report lists factors that customers weigh
15 when considering to renew their maintenance agreements; is
16 that correct?

17 A. Yes, it is.

18 Q. And I'm referring specifically, sir, to page 31 of
19 your report, paragraph 59.

20 A. Yes, I see that.

21 Q. So you list about eight factors that customers
22 consider when making support decisions?

23 A. Yes, that they consider or that they weigh. That's
24 the word that I chose. But, yes.

25 Q. Okay. We'll use your word, they weigh these factors

1 when they're making their support decisions; correct?

2 A. Yes.

3 Q. All right. Mr. Yourdon, we've got a slide, and
4 we're going to go through your different -- your factors
5 from your report.

6 The first factor which I think you talked about
7 on direct was price. So you agree with me, sir, that price
8 is a factor weighed when licensees consider whether to
9 renew their support decisions?

10 A. Yes, I do.

11 Q. Okay. And, in fact, in your report you list several
12 Rimini customers that, from your review of the evidence,
13 weigh price; is that fair?

14 A. Yes, that's fair.

15 Q. Okay. Now, the price isn't the only factor that you
16 wrote -- that you reflect in your report, is it, sir?

17 A. No, it's not.

18 Q. Okay. So the next factor is the reliability -- or
19 the availability of reliable alternatives; is that right,
20 sir?

21 A. Yes.

22 Q. Okay. And, again, this is a factor that is weighed
23 by licensees when considering whether to renew maintenance
24 agreements with their vendor; correct?

25 A. That's correct.

1 Q. And one of the alternatives that at least some of
2 Rimini's customers considered was self-support; correct?
3 A. Yes.

4 Q. And we talked about self-support a little bit during
5 your direct; correct?

6 A. That's correct.

7 Q. And self-support, just to remind the jury, is when
8 the licensee does not have a vendor, they support it
9 themselves with their own personnel; correct?

10 A. Basically that's correct, yes.

11 Q. And so, for example, referring to your case study
12 clients, Pitney Bowes is one of the clients that did not
13 renew it's Oracle support contract and elected to proceed
14 with self-support before going to Rimini Street; is that
15 correct?

16 I'll give you the page if you like.

17 A. Yes, please, if you could.

18 Q. Yes. It's page 70, it's paragraph 132.

19 A. Yes, I see that.

20 Q. So you agree with me that Pitney Bowes elected
21 self-support before going to Rimini Street?

22 A. Well, certainly I see that they elected to proceed
23 with self-support. I'm looking for the -- well, yes, in
24 the following paragraph, Pitney was unwilling to continue
25 running the risks associated with self-support and then

1 moved to Rimini.

2 Q. Exactly. They considered themselves lucky to be
3 able to have self-supported their product. Is that what
4 you said in your report?

5 A. They considered themselves lucky to have avoided the
6 consequences of the risks that they were experiencing with
7 self-support.

8 Q. All right. Nevertheless they self-supported
9 themselves in this case for about a year; is that right?

10 A. Yes, that appears to be the case.

11 Q. Okay. So let's move on to your third bullet point,
12 sir, which is stability or stagnation of the existing ERP
13 system; is that right?

14 A. Yes. So we're back to the list in paragraph 59?

15 Q. Yes.

16 A. Yes.

17 Q. And so the stability, stagnation of existing ERP
18 system is another factor that's weighed by licensees in
19 considering whether to renew maintenance agreements;
20 correct?

21 A. Yes.

22 Q. And there's evidence in this case that at least some
23 of the Rimini customers considered the stability or
24 stagnation of their existing system in making the decision
25 to leave Oracle support; correct?

1 A. Yes, they considered it.

2 Q. Okay. And the next factor, sir, is likelihood of
3 upgrading. So, sir, you list likelihood of upgrading to a
4 newer version as a factor that customers weigh in
5 considering whether to renew maintenance agreements with
6 ERP vendors; is that correct?

7 A. Yes, that's correct.

8 Q. And, again, there's evidence in this case that at
9 least some of the Rimini customers considered this factor
10 when -- the likelihood of upgrading to a newer version in
11 making their support decisions; correct?

12 A. Yes.

13 Q. Again, referring you, sir, to footnote 42 on page
14 32, you cite -- I'm sorry, I'll let you get there. Are you
15 there?

16 A. Oh, yes, I'm on page 32, but I thought you were
17 going to cite a footnote.

18 Q. It's footnote 42 on page 32.

19 A. Oh, got it, yes.

20 Q. Okay. So in this case you cite Hastings
21 Entertainment, J-Pac Travel, JB Hunt, Koch Business
22 Solutions, Sunrise Medical, and YUM Brands as Rimini
23 clients that considered the likelihood of upgrading to a
24 newer version in connection with their support decisions;
25 correct?

1 A. Yes, that's correct.

2 Although ultimately all customers, all
3 companies, in my experience, upgrade. It's simply a
4 question of whether it's this year or next year, you know,
5 or a couple years further down the road.

6 Q. Right. In this case, these customers left Oracle
7 support with consideration to their upgrade plans; correct?

8 A. Let's see. We'll need to look at the footnotes to
9 see whether that --

10 Q. Footnote 42, sir?

11 A. Yeah, footnote 42 says that they considered this
12 factor. I didn't see the closing of the loop, so to speak,
13 indicating that those companies had, in fact, gone to
14 Rimini because that -- that term had to be a determinative
15 factor. I certainly agree that it was a factor that they
16 weighed.

17 Q. Yes, sir. And that was my question.

18 And so moving on to the next factor that you
19 list of the likelihood of moving to a different vendor.
20 Again, this is back on page 32, sir.

21 A. Yes.

22 Q. You list likelihood of moving to a different vendor
23 as a factor weighed in considering whether to renew
24 maintenance agreements with vendors; correct?

25 A. Yes.

1 AGCO's JDE software?

2 A. The contractor with Rimini Street in
3 December of 2010.

4 PAGE 15:18 TO 16:01 (RUNNING 00:00:21.940)

5 Q. And before December 2010, who was
6 supporting it? Was another company
7 supporting JDE's software?

8 A. Oracle was supporting our JD Edwards
9 software.

10 Q. And before Oracle supported AGCO's JD
11 Edwards software, was another company
12 supporting AGCO's JD Edwards software?

13 A. No.

14 PAGE 18:20 TO 18:22 (RUNNING 00:00:02.178)

15 (The Reporter marked the document
16 referred to as Deposition
17 Exhibit 1182 for identification.)

18 PAGE 19:03 TO 19:08 (RUNNING 00:00:15.941)

19 Q. What is this document?

20 A. This is an executive summary that was
21 prepared, I believe by Larry Maya,
22 accompanying the contracts for Rimini Street.

23 Q. Do you believe that because you've seen
24 this document before?

25 PAGE 19:09 TO 19:20 (RUNNING 00:00:39.518)

1 A. I do not recall seeing this document, but
2 this is the format of the executive summary.

3 Q. Does that mean that AGCO regularly
4 prepares executive summary agreements?

5 A. Yes.

6 Q. And what is the purpose of an executive
7 summary?

8 A. The executive summary document often will
9 accompany the contract information so that an
10 executive can quickly read and pertain what
11 this agreement is without having to read
12 through the entire resulting documents.

13 PAGE 20:04 TO 20:13 (RUNNING 00:00:38.675)

14 Q. Why does AGCO prepare executive summaries?

15 A. I believe to give someone an initial
16 understanding of what the documents are that
17 accompany this are about. I don't think that
18 the intent is that they just read the
19 executive summary. I think the intent is to
20 give them an overview before they read the
21 entire document.

22 Q. Are the points raised in the executive
23 summary the points that are most important in
24 the agreement that accompanies the summary?

25 PAGE 20:14 TO 20:22 (RUNNING 00:00:28.905)

1 A. Generally, yes.

2 Q. I'd like you to read the last bullet under
3 "Business Driver/Need"?

4 A. "These agreements will continue to provide
5 software support for JD Edwards and
6 PeopleSoft applications on a global basis at
7 a 50% cost reduction."

8 Q. Was that the most important reason for the
9 attached agreement?

10 PAGE 20:25 TO 21:11 (RUNNING 00:00:37.917)

11 THE WITNESS: I would say yes, it probably
12 was the most important reason. It was not
13 the only reason, but it was the most
14 important.

15 BY MR. RODRIGUEZ:

16 Q. Okay. Are any other reasons provided in
17 the executive summary?

18 A. No.

19 Q. So an executive who picked up the
20 executive summary in the contract would see
21 the price as the most important agreement --
22 as the most important reason?

23 A. I think that's correct.

24 PAGE 27:22 TO 27:25 (RUNNING 00:00:15.828)

25 Q. If I could prove to you and to the Court

1 that Rimini Street had engaged in large scale
2 and systematic illegal downloading of Oracle
3 materials, would AGCO have contracted with
4 Rimini Street?

5 PAGE 28:04 TO 28:06 (RUNNING 00:00:13.274)

6 THE WITNESS: If Rimini Street was convicted
7 of illegal activity, I do not think AGCO --
8 AGCO would not do business with them.

9 PAGE 28:08 TO 28:11 (RUNNING 00:00:17.641)

10 Q. When you say, "convicted," do you mean if
11 it had been proven in a court of law that
12 Rimini Street engaged in illegal activities?

13 A. Yes.

14 PAGE 32:04 TO 32:05 (RUNNING 00:00:06.542)

15 Q. Is it important to you that Rimini Street
16 be able to at least match Oracle's support
17 level?

18 PAGE 32:06 TO 32:08 (RUNNING 00:00:07.312)

19 A. Our understanding and experience has been
20 that Rimini Street has surpassed Oracle's
21 support level.

22 PAGE 32:25 TO 33:06 (RUNNING 00:00:28.318)

23 Q. Okay. Were there any other companies
24 besides Rimini Street and Oracle that AGCO
25 considered contracting with for JD Edwards

1 support?

2 A. Not that I'm aware of.

3 Q. Are you aware of any companies besides
4 Rimini Street and Oracle that would be
5 capable of satisfying AGCO's need for JD
6 Edwards support?

7 PAGE 33:07 TO 33:08 (RUNNING 00:00:08.999)

8 A. I am not aware of any other companies that
9 provide that type of support for JD Edwards.

10 PAGE 33:09 TO 33:21 (RUNNING 00:01:02.471)

11 Q. If Rimini Street had not existed, would
12 AGCO still be on Oracle's support for JD
13 Edwards?

14 A. One of the things we were also considering
15 is completely dropping Oracle support for JD
16 Edwards.

17 Q. And what would AGCO have done in that
18 circumstance?

19 A. Supported the applications ourself.

20 Q. Okay. Do you have a sense as to the
21 manpower that would be required for that?

22 A. We get very little support from Oracle
23 over the last several years. We are not
24 upgrading our product that we had from them,
25 and we have had very few calls to their

1 support line that I'm aware of.

2 PAGE 37:11 TO 37:14 (RUNNING 00:00:19.878)

3 Q. When you said AGCO was considering self
4 support, did AGCO consider the efforts
5 required to monitor new legislation?

6 A. Yes.

7 PAGE 37:15 TO 38:02 (RUNNING 00:00:47.997)

8 Q. Did AGCO have an estimate of what that
9 would cost AGCO?

10 A. In North America, we looked at how we
11 would support our regulatory changes, yes.

12 Q. And did looking at how AGCO would support
13 regulatory changes involve estimating the
14 cost to AGCO of supporting those regulatory
15 changes?

16 A. Yes.

17 Q. What was that cost?

18 A. For North America, the cost would be
19 acquiring a third-party product to produce
20 1099 documents, which is relatively
21 inexpensive as compared to the amount we were
22 being charged by Oracle.

23 PAGE 38:03 TO 38:12 (RUNNING 00:00:41.640)

24 Q. And what about South America?

25 A. I have no knowledge of what their cost

1 estimates were.

2 Q. Does AGCO have JD Edwards installations in
3 Europe?

4 A. AGCO does have an older JD Edwards
5 implementation in Europe.

6 Q. Did AGCO consider the efforts involved in
7 monitoring European legislation?

8 A. I have no knowledge of the European
9 efforts.

10 PAGE 46:01 TO 46:02 (RUNNING 00:00:06.156)

11 Q. As of 2007, was it AGCO's position that it
12 wanted to be on SAP by 2010?

13 PAGE 46:03 TO 46:07 (RUNNING 00:00:25.922)

14 A. My memory is that we had firm plans for
15 initial implementations. After the initial
16 implementations, the plans were less
17 concrete. But, yes, there was a desire to
18 move toward -- to SAP from the top of the
19 corporation.

20 PAGE 46:08 TO 46:17 (RUNNING 00:00:47.871)

21 Q. "From the top of the corporation." Does
22 that mean that the plans are not coming from
23 technology people?

24 A. These can be business plans. These were
25 largely driven by business plans that are

1 seeking to have a unified software
2 architecture.

3 Q. Have those plans run into difficulties?

4 A. Implementations are always difficult, so
5 there have been difficulties. Or they have
6 been amended over time.

7 PAGE 57:04 TO 57:10 (RUNNING 00:00:42.651)

8 Q. In AGCO's experience, does Oracle
9 negotiate on price?

10 A. Yes, except for maintenance.

11 Q. What do you mean, "except for
12 maintenance"?

13 A. We have tried in the past to reduce our
14 maintenance for our JD Edwards applications,
15 and I don't think we've had very good success
16 in that.

17 PAGE 59:19 TO 59:24 (RUNNING 00:00:23.081)

18 Q. Does AGCO today see a long-term future
19 with Oracle, with respect to any software,
20 not just JD Edwards?

21 A. With respect to any software?

22 Q. Any Oracle software.

23 A. I would say yes.

24 PAGE 63:13 TO 64:08 (RUNNING 00:01:16.013)

25 Q. All right. Earlier opposing counsel asked

1 some questions about considerations that AGCO
2 made in determining to move from Oracle
3 support to Rimini Street support, one of
4 which was cost; is that correct?

5 A. Correct.

6 Q. What other considerations did AGCO weigh
7 when making a decision to switch to Rimini
8 Street?

9 A. One of the other big considerations is --
10 for us was cost avoidance of having to
11 upgrade our JD Edwards environments to still
12 maintain support from an outside party.

13 Q. And why -- if AGCO had stayed with Oracle,
14 why would AGCO have been forced to switch to
15 a newer software platform?

16 A. Oracle only provides support for -- it is
17 my understanding that Oracle only provides
18 support for older releases of software for a
19 certain period of time, and in order to still
20 be in a position to get support on those
21 applications, we feel forced to upgrade to
22 the next release.

23 PAGE 65:07 TO 65:19 (RUNNING 00:00:54.704)

24 Q. Sure. Sure. We were discussing cost and
25 quality of service and fit for situation as

1 reasons why AGCO chose Rimini Street.
2 A. Okay. The fit for the situation was --
3 really describes the fact that we are at the
4 end of our -- the perceived end of our life
5 of these JD Edwards applications and really
6 are trying to extend that life while we are
7 rolling out the new SAP solution. We would
8 ideally not like to go through the time and
9 effort to implement a new release to be able
10 to extend the life of our existing release of
11 the software, continuing to provide the same
12 functions that they are delivering in our
13 business.

14 PAGE 65:20 TO 66:22 (RUNNING 00:01:49.151)

15 Q. And has the Rimini Street support allowed
16 AGCO to extend the life of its JD Edwards
17 software?

18 A. Yes.

19 Q. And one of the other considerations you
20 mentioned was quality of service. When you
21 compare the quality of support service
22 received from Oracle versus that of Rimini
23 Street, which is superior?

24 A. We have found that the -- for the issue
25 support that we receive, Rimini Street is

1 much superior. We have a named software
2 engineer who contacts us within 30 minutes of
3 any problems. We are able to self select the
4 seriousness of the issue, and if we have a
5 very high priority one, we can designate it
6 high priority. And just three weeks ago we
7 had a situation where we had that issue, and
8 we had a Rimini Street person on the phone
9 with us at 9:00 o'clock at night within 30
10 minutes of calling the issue in, and he
11 stayed on the phone with us through almost
12 1:00 o'clock in the morning. So that was
13 pretty good support. Excellent support.

14 Q. And did you have a similar experience with
15 Oracle support?

16 A. Oracle support is -- was not nearly as
17 customer focused. Oracle support only
18 supports their application, and if the
19 application is modified, they do not support
20 it. So Rimini Street is willing to work with
21 us kind of where we are in the situation
22 that we're in."

23 (End of Deposition.)

24 THE COURT: All right. It's 5:00, ladies and
25 gentlemen. I'm sure you're ready to go home. We are all

1 are.

2 I will give you the cautionary instruction just
3 because it's been a while.

4 I remind you not to converse about the case with
5 anyone, or allow anyone to discuss it in your presence.

6 I remind you not to read, watch, or listen to
7 any report or commentary relative to this case in any way
8 in any medium, and that would include the Internet,
9 newspaper, radio, television, et cetera.

10 I caution you not to do any independent research
11 on your own of any kind with the interest that this jury
12 decide this case based on having heard all the same
13 evidence.

14 Please keep an open mind until all the witnesses
15 and evidence has been presented and you've heard the
16 Court's instructions on the law, you've heard the
17 attorneys' closing arguments, and the jury is finally able
18 to deliberate this case.

19 And if you've taken your notes, please leave
20 them in the jury room.

21 We'll start promptly in the morning at 8:00 a.m.

22 And I would tell you, I think we continue to be
23 moving along fairly well. So I wish you a pleasant
24 evening. Thank you very much, and you may step down.

25 COURTROOM ADMINISTRATOR: Please rise.

1 (Jurors exit courtroom at 5:06 p.m.)

2 MR. ISAACSON: Your Honor, nothing major.

3 During the last few minutes we've gotten a Rule
4 50 brief that's about 42 pages so then rather than tomorrow
5 night, we'd like until 8:00 a.m. the following day.

6 THE COURT: Not a problem.

7 But that brings to mind another thought that I
8 had earlier today. I anticipate that the briefing on the
9 Rule 50 is extensive, as you've just indicated, and I
10 haven't seen -- I haven't seen what has been filed on
11 behalf of defendants.

12 But it's entirely possible -- usually I -- if
13 the question is complex, if I feel that I need to review
14 evidence and -- it's just not a straightforward question, I
15 will frequently take those motions under consideration and
16 reserve ruling on them, and we'll go ahead and instruct and
17 go to the jury on the issues.

18 That brings to mind that I haven't received any
19 proposed verdict forms, and I'm sure that's not a pleasant
20 subject for anyone to deal with in a case like this, but it
21 needs to be dealt with.

22 So I'd like to have some proposed verdict forms.
23 I'm not really giving you a time limit on this, but it's in
24 our interest to get that underway.

25 MR. ISAACSON: The parties have exchanged

1 proposed verdict forms. I think we're only 999 pages apart
2 in length, but I think we're both in a position to submit
3 competing verdict forms.

4 THE COURT: If you are, I would encourage you to
5 do that; the earlier the better.

6 MR. WEBB: One more thing, Judge, and I haven't
7 had a chance to talk to Bill about this, but the way the
8 schedule has sort of fallen out, it looks like we may be
9 sort of done with the presentation of evidence Thursday, if
10 not Wednesday.

11 Rather than bringing the Court back on Friday,
12 one possibility would be for us to come up to Reno so your
13 staff doesn't have to come back down here after your
14 meeting on Thursday.

15 We're just trying to do the charge conference up
16 there in your court. I just put that as a possibility.
17 I'm sure that Oracle wouldn't object, but it may save you
18 another trip back and forth.

19 THE COURT: Say again.

20 MR. WEBB: If we're doing the charge conference,
21 and you expect that it might be the better part of a full
22 day, if we wrap up early enough, it may prevent you all
23 from coming back down here because to finish up the rest of
24 the week because I know Your Honor has to go up to Reno --

25 THE COURT: Well, that's unique to me, not to

1 MS. CHUANG: The hearsay exception is to test
2 whether this material is suspect or -- it's not here. This
3 is information that is used to run Rimini Street
4 businesses.

5 It's recorded, it's routinely recorded per
6 Rimini protocols, and they were made at the time of the
7 events, and they were made with personal knowledge. And so
8 it's to --

9 THE COURT: All right. Here's the --

10 (Simultaneous indecipherable conversation.)

11 THE COURT REPORTER: I didn't hear what he just
12 said.

13 THE COURT: That's all right, Donna.

14 I'm going to sustain the objection because I
15 feel that it -- that you are going into a subject matter
16 that's outside of this witness's certainly realm and
17 position and role with the company.

18 I'm not -- he can testify to surveys, but I have
19 a problem with him going through specific surveys and what
20 they are and what they show because once you do that,
21 you're offering him as a witness in support of inadmissible
22 evidence which would be in the form of survey results one
23 way or the other.

24 He can testify to what they did as a result of
25 surveys.

1 MR. ISAACSON: Right. Then that's what's
2 happened before is Mr. Maddock testified they did surveys
3 and testified about how they used them.

4 Ms. Ransom testified about Oracle surveys and
5 how they used them.

6 No one testified about the result of surveys.

7 THE COURT: And that's my view.

8 MS. CHUANG: Thank you, Your Honor.

9 THE COURT: Thank you.

10 (Sidebar conference concluded.)

11 THE COURT: All right. Go ahead, please,

12 Ms. Chuang. The objection is sustained.

13 BY MS. CHUANG:

14 Q. Okay. Mr. Rowe, going back to the Service
15 Dissatisfaction, was this an issue that Rimini Street felt
16 was something you needed to address within the marketplace?

17 A. Yes, definitely.

18 Q. And when you talked to customers or marketed
19 Rimini's services, what did you tell customers specifically
20 about Oracle's support and the state of the enterprise
21 software of Oracle?

22 A. Well, I think, as a large ERP provider, Oracle fits
23 into the same framework. Their software works really well,
24 it's really mature, it's really stable.

25 My understanding from my experience is that the

1 incremental releases does not add as much value as they
2 used to.

3 They do have the similar support window that
4 other software vendors do, and eventually you end up
5 without getting new updates for fixes and tax and
6 regulatory updates, you have an upgrade decision, and they
7 spend roughly about six cents of every dollar of support on
8 support.

9 MS. CHUANG: Can we turn to slide 2, Marie?

10 BY MS. CHUANG:

11 Q. Mr. Rowe, has the marketing department also
12 developed a standard message that helps educate Rimini
13 Street's support model?

14 A. Yes.

15 Q. And is this support model something that was
16 developed in response to what we just saw, the unmet needs
17 within the industry?

18 A. Yes, it was.

19 Q. And before we talk about this slide, would this also
20 be an example of a presentation that Rimini Street
21 salespeople or marketing would use?

22 A. Yes, it is.

23 Q. And let's see if we can break this down for the
24 jury, if we could.

25 First of all, tell us what this slide describes.

1 A. So, what this slide is, is based on that state of
2 the enterprise software market that we just looked at, this
3 is our view on the fact that the industry needs a new
4 model, something that's more focused on the services that
5 companies need, and is a better value so that they can save
6 money and spend it on more innovation that they need for
7 their business. That's why we created this new model.

8 Q. Okay. So let's look at this new model.

9 Under Focus you have traditional is
10 vendor-centric, and then Rimini Street is client-centric.
11 What do you mean by that?

12 A. What I mean by that is that, you know, we believe a
13 customer should receive personalized service. When they
14 have an issue, they receive the fix for that issue.

15 And, in many cases, at enterprise software
16 companies, it's a one-to-many relationship where it's
17 generic fixes for all customers, not personalized.

18 Or the fix, if it's provided, might be in a
19 bundle of a hundred other fixes, and you have to apply them
20 all to get the one you want, and sometimes that's more
21 work, more effort, and breaks other things.

22 And we believe it should be one-to-one in terms
23 of the relationship, much more personalized.

24 Q. Okay. Cost Model. We've already talked about the
25 90 percent plus margins. What's Rimini Street's support

1 model?

2 A. Rimini Street's simple in terms of our pricing.

3 It's 50 percent of what the customer pays the software
4 vendor today.

5 Q. And then Support Coverage, Vanilla Software Only,
6 and under Rimini Street support you have custom and
7 vanilla. Can you tell us about that?

8 A. Sure, yes.

9 I mean, we just talked about the custom
10 software, and that's where many or most, in our experience,
11 of the issues are in enterprise software.

12 We believe that the new model should support
13 both, custom -- issues in custom code and in vanilla code
14 that comes right from the software vendor.

15 Q. Delivery Model. Here, the traditional model,
16 book-trained help desk. What is Rimini Street's support
17 model?

18 A. Rimini Street's model is putting the expert on the
19 frontline working directly with the customer, rather than
20 having a help desk of generic folks that may not have the
21 same expertise and you have to go through escalations to
22 ever talk to an engineer.

23 MS. CHUANG: Okay. Can you flip to the next
24 slide, please, Marie?

25

1 BY MS. CHUANG:

2 Q. Okay. And is this the model that Rimini Street
3 employs?

4 A. It is, yes.

5 Q. Okay. So let's look at this. Primary support
6 engineer, can you explain to us kind of the first two
7 columns, if you could.

8 A. Yes. So this slide represents really the core, the
9 essence of the Rimini Street model. I mean, this is it.

10 It's about having a primary support engineer, we
11 call it the PSE, working directly with the client. It's
12 the expert taking the phone call.

13 In fact, many of our customers have the mobile
14 phone of their expert engineer. It's that sort of
15 relationship; right?

16 And it's more expensive because that's a very
17 expensive resource, but it's much more cost effective. For
18 us, it's much more efficient because they're just better at
19 fixing issues. You call the person, and they know it much
20 more quickly.

21 And because the expert's on the frontline,
22 that's how we can support customizations. They get to know
23 the client's environment, and this is really the core of
24 our entire support model.

25 Q. So, what's that -- you have a line also with a box.

1 Explain that to the jury.

2 A. Yes. And this is also very, very important in our
3 support model.

4 The PSE is on the frontlines, the expert, but
5 these software systems are vast, both functionally in terms
6 of modules, as well as technically, lots of technologies
7 and things.

8 One person could not know everything. So you
9 have an expert on the front, but you've got to have this
10 team behind you supporting you as a PSE across all the
11 technologies, across all the world, in fact, the
12 geographies we support.

13 And that's what this team do -- does across the
14 functionality, the business, the QA, everything; all right?
15 Very, very important in our model.

16 Q. Mr. Rowe, the jury has heard from Shelley Blackmarr,
17 who is a Rimini Street primary support engineer, or PSE.

18 Based on your experience and observations, how
19 important is a PSE when you sell Rimini's services?

20 A. In my opinion, this is the most important thing
21 about our software support model. You know, the PSEs, like
22 Ms. Blackmarr that you just mentioned, get to know their
23 environments, fix the issues that customers have.

24 And it's interesting what happens. In our
25 experience, when customers come onboard, their case volume

1 are from 2011. This video is about five minutes long, and
2 there are no exhibits.

3 THE COURT: All right. Thank you.

4 (Videotape deposition of Rhonda Minks
5 played.)

6 PAGE 7:13 TO 7:16 (RUNNING 00:00:09.859)

7 "Q. Ms. Minks, we met just before this
8 deposition started; but could you state and
9 spell your name for the record?

10 A. Rhonda Minks, R-H-O-N-D-A M-I-N-K-S.

11 PAGE 11:18 TO 11:24 (RUNNING 00:00:17.918)

12 Ms. Minks, what's your current job title at
13 Brazoria County?

14 A. I am in the information systems
15 department, and I'm a programmer analyst.

16 Q. And is that the same job title as you had
17 in 2007?

18 A. Yes. It is.

19 PAGE 12:09 TO 12:18 (RUNNING 00:00:29.723)

20 Q. So what were your job responsibilities in
21 2007?

22 A. Back then, when we had PeopleSoft support,
23 it was more of a perpetual upgrading mode and
24 software support.

25 Q. Okay. So Brazoria County uses PeopleSoft

1 software. Is that right?

2 A. We do.

3 Q. And you use Financials and HCM?

4 A. We do.

5 PAGE 13:23 TO 14:10 (RUNNING 00:00:45.409)

6 Q. Ms. Minks, at some point Brazoria County
7 decided to consider third-party support for
8 PeopleSoft. Is that right?

9 A. Yes, it is.

10 Q. Did Brazoria County ever consider
11 self-supporting?

12 A. Yes.

13 Q. And why did it decide not to use
14 self-supporting?

15 A. Gene was our main programmer, Gene
16 Wittneben, and he never -- I couldn't say why
17 he decided, but he just took it into
18 consideration when he made his decision and,
19 I guess, won out with a third party.

20 PAGE 14:11 TO 14:21 (RUNNING 00:00:42.767)

21 Q. Does Brazoria County require tax and
22 regulatory updates?

23 A. We do, in both HR and Financials.

24 Q. Does Brazoria County have the expertise
25 and the resources to develop and research tax

1 and regulatory updates?

2 A. We have not done that in the past, our
3 present staff. Are we capable of it? It
4 seems like it would be all-consuming, and
5 there is more to our job than that one thing;
6 so I feel that's why we went out to get
7 someone else to do it.

8 PAGE 14:22 TO 15:07 (RUNNING 00:00:30.663)

9 Q. And Brazoria County has never developed
10 its own tax and regulatory updates. Is that
11 right?

12 A. I cannot swear to that because, prior to
13 my time, Gene was the main programmer and he
14 did a lot of the payroll stuff; so I wouldn't
15 put it past him back there.

16 But to answer yes or no, I don't know; and
17 he's not here to ask.

18 Q. And would that have been before Brazoria
19 County used PeopleSoft?

20 A. Yes, it would be.

21 PAGE 36:02 TO 36:14 (RUNNING 00:00:46.004)

22 Q. (By Mr. Hill) But it's not likely?

23 A. So you're saying if Oracle cost this much
24 and Rimini cost the exact same amount, would
25 we have switched?

1 Q. That's right.

2 A. Back then, Gene was really upset because
3 we were having to repurchase a product that
4 we already purchased. His being upset is
5 what caused us to even go look for a
6 third-party support; so in my opinion, we may
7 have switched, because it would have allowed
8 us not to have to do perpetual updates and
9 just to stay with what we had and let them do
10 our tax updates and we could continue with
11 the customizing product.

12 PAGE 60:22 TO 61:01 (RUNNING 00:00:17.849)

13 If the use of Brazoria County's software to
14 create environments for other Rimini Street
15 customers was a violation of Brazoria
16 County's PeopleSoft license, would Brazoria
17 County have allowed Rimini Street to do that?

18 PAGE 61:03 TO 61:08 (RUNNING 00:00:21.893)

19 A. No. I mean, if it's a violation of a
20 license, I don't think they would have.

21 Q. (By Mr. Hill) And if Brazoria County knew
22 that it was a violation of the PeopleSoft
23 license and it knew that Rimini Street would
24 do that, would it have contracted with Rimini
25 Street?

1 PAGE 61:10 TO 61:14 (RUNNING 00:00:18.741)

2 A. I don't know. I don't think you want to
3 -- I mean, if you're saying, "Hey, somebody
4 is going to do something wrong; are you still
5 going to go with that?"

6 I mean, the common answer would be, no,
7 you're not going to want to do something
8 wrong.

9 PAGE 65:18 TO 65:21 (RUNNING 00:00:10.740)

10 Q. Would Brazoria County have served as a
11 reference for Rimini Street if it wasn't
12 getting quality service?

13 A. No. We were tickled pink with our
14 services.

15 PAGE 67:15 TO 67:17 (RUNNING 00:00:11.312)

16 Q. Would you have recommended Rimini Street
17 if you knew that Rimini Street was infringing
18 Oracle's PeopleSoft copyrights?

19 PAGE 67:20 TO 67:21 (RUNNING 00:00:09.135)

20 A. If somebody was breaking the law, I would
21 not recommend them; but we didn't know that."

22 (End of videotape deposition.)

23 MR. RECKERS: Your Honor, that would be all that
24 we have for today.

25 THE COURT: All right. And it's shortly before

1 2:00, and I appreciate that we've been able to fill the
2 afternoon.

3 Ladies and gentlemen, I'm going to excuse you
4 for your evening recess.

5 I remind you of all of the admonitions, and I'm
6 not going to go through them again, you've heard them
7 enough, for now.

8 But please remember how important those are.
9 You've seen what goes into a trial like this and how much
10 is involved and everyone's time and how important it is.
11 So I ask you to please keep those admonitions in mind at
12 all times.

13 A couple of words for you. We'll start tomorrow
14 morning at 8:00 as usual, but we will be finishing a little
15 bit early. I anticipate closing down by 12:30 tomorrow.
16 It will be right around that time.

17 And on the following morning, on Thursday
18 morning, we will probably not start until 9:00 a.m. But I
19 can confirm that again with you when I excuse you tomorrow.
20 So if that affects your personal schedules at all, that's
21 why I like to let you know.

22 So please remember the admonitions.

23 You may go ahead and step down for the evening,
24 and I'll wish you a pleasant evening.

25 COURTROOM ADMINISTRATOR: Please rise.

1 (Jurors exit courtroom at 2:01 p.m.)

2 THE COURT: Have a seat.

3 I'm actually going to take a brief recess, but
4 before we take the time to go through the video deposition
5 of Mr. Simmons -- isn't it -- I wanted to confirm that, in
6 fact, it's the intention of defendants to offer the
7 deposition -- the video deposition into evidence. Is that
8 correct?

9 MR. RECKERS: Yes, Your Honor.

10 And just to be clear, the version that you're
11 reviewing has both Rimini's designations and Oracle's
12 designations and basically everyone's counters and all.

13 There is a -- further means of explanation,
14 there are some sections of that that have additional
15 objections beyond the overall relevance objection that I
16 think is a threshold issue for the clip that plaintiffs are
17 offering, and that if Your Honor overrules the relevancy
18 objection there are some, it's a small number, of
19 additional objections for really small passages.

20 I think that's where we are.

THE COURT: Ms. Dunn, is there anything you would like to offer too?

23 MS. DUNN: Yes. We'd like to respond to the
24 foundation question based on Mr. Rowe's testimony.

25 THE COURT: I recognize that.

1 and we'd get a call back from someone at Oracle and Oracle
2 support.

3 But what we found was over time the calls that
4 we were getting back were not from people who understood
5 the software or understood the different aspects or
6 components of what could be broken.

7 So basically people would call us back, but it
8 was just like -- it was just more of a courtesy callback
9 just to say, yeah, we know you -- and we just want to let
10 you know we know that you've logged a problem, and we'll
11 have our engineers look at it.

12 Okay. And then we'd go through a process of
13 they'd say, hey, can you please upload the log files where
14 there's an error. Sure. So, you know, we'd send them some
15 information, and we'd wait.

16 And then we'd ping them and say, you know, have
17 you guys made any progress, and then they would come back
18 with more questions. Well, can you send us information on
19 this or on this other piece. And a lot of times the
20 information they were asking for wasn't relevant at all to
21 what was broken.

22 So I was finding that my guys were spending a
23 lot of time -- what I would describe as just wasting their
24 time, and it wasn't -- and it was time that was not
25 actually moving towards a fix to the problem.

1 And what everybody needs to understand is while
2 it's broken, that's causing -- that's something that Bausch
3 & Lomb can't do.

4 So whether it's something on the financial side,
5 or whether it's taking orders, that whole time that the
6 product isn't functioning, Bausch & Lomb is losing money.
7 So time's important.

8 And we found that there was a lot of back and
9 forth, and, in the end, in many cases, we wound up just
10 fixing it ourselves.

11 So, I had development staff there, and we
12 couldn't let it be broken any more, so, you know, I'd get
13 my guys together and say you've got to figure it out,
14 you've got to fix it.

15 So they would dig into the code, and they would
16 see what was broken, and then they would come back and say,
17 hey, we could do this or that to fix it, and, great, they'd
18 fix it.

19 And then we would actually provide that fix back
20 to Oracle, and say, hey, you know, that case we have
21 opened, here's our fix, here's what we did.

22 We would send it back to them with the hope that
23 they would include it in future releases so that when --
24 it's a circle, so when it comes back to us in a patch, it
25 doesn't re-break what was already broken the first time.

1 So that was fairly consistent.

2 Q. Did you ever have an occasion to call the Oracle
3 help desk?

4 A. Well, we did it via phone, or sometimes it was
5 through their portal where you would actually log a ticket.

6 Q. Understood. And in either respect, did you find
7 that Oracle's responsiveness was at a high level?

8 A. So the responsiveness -- and this is a tricky thing.
9 You could argue that in one aspect they were responsive.
10 So when we log a ticket, they would call you back, but the
11 call-back wasn't a fix, it was just a -- they would call
12 back to acknowledge that we have your ticket and we'll work
13 on it.

14 So, in that sense, did they call back? Yes, but
15 they weren't responsive in fixing problems. So the
16 problems would just linger.

17 Q. How did this impact your team and the resources at
18 your disposal?

19 A. So it was problematic for my team.

20 I had about 40 people working on my team. We
21 had only slated 20 of them to help support PeopleSoft. The
22 other 20 were supposed to be off doing other projects.

23 But because we weren't getting the support we
24 needed from Oracle, we had to pull a lot of those back in
25 to support the platform.

1 And basically what we wound up doing for the
2 other projects was going out to a vendor and paying a
3 consultant to come in and do that work instead of having my
4 guys do the work because my guys were busy back supporting
5 the PeopleSoft environment which was never the plan.

6 Q. So you would log a problem with Oracle, and they
7 would not fix it in a timely fashion, so your folks would
8 have to do the fixing for you?

9 A. Yes.

10 Q. When you contacted Oracle with a problem, describe
11 for the jury the level of experience of the person who
12 answered the phone.

13 A. Yeah. The level of experience deteriorated over
14 time.

15 So at the point of acquisition where PeopleSoft
16 was doing the support, in the beginning, it was the same
17 people we were talking to, and they were fairly
18 knowledgeable.

19 What we found over time was we were being -- we
20 were talking to people who had very little experience with
21 the software.

22 And to give you an example, we'd have a problem
23 in our accounts payable software, and -- which sits in the
24 financial suite. So we'd call and say, hey, here's the
25 problem, it's in accounts payable.

1 And then we would get questions back like, okay,
2 well, which vertical is that, is that in HR? No, it's not
3 in HR, it's your product, and you should know that, it's in
4 the financial suite.

5 So it was clear from the questions we were
6 getting back that the people we were talking to didn't have
7 a lot of experience. They were, I would argue, not well
8 trained.

9 Q. What would you have to do to actually get and reach
10 someone that you felt was sufficiently experienced to help?

11 A. We escalated. So we had an account manager that we
12 would call, especially when the problem was really causing
13 us an issue.

14 We just -- we'd log the ticket, and this became
15 routine. And we would call up the account manager, and
16 we'd say, hey, you got to help us here, you got to reach
17 back into Oracle. We're dealing with the first level of
18 support, but can you reach out and get somebody deeper in
19 second or third level of support, someone who has the kind
20 of experience that can fix this for us.

21 Q. Now, the jury has heard from Oracle executives that
22 Oracle provides excellent service. Is that consistent with
23 your experience?

24 A. No, it was certainly not consistent with mine.

25 Q. Okay. Now, you mentioned earlier that the reason

1 you decided to move off of Oracle was that you were not
2 getting good value for \$2.2 million you were paying Oracle?

3 A. Yeah. So, there's two pieces to that support
4 payment that we make, and one piece certainly is the
5 support that we're talking about. When something breaks,
6 we need it fixed.

7 But the other piece is that 2.2 million gave us
8 rights to all the future software that we were licensed for
9 that Oracle was developing.

10 So it's kind of like a new release of Windows,
11 you know, when you're going from 7 to 8 to 9 to 10,
12 whatever, you have rights to that because you cut them a
13 check every year.

14 So that was a big piece of the value that we
15 were interested in was the new features and functions that
16 were going to come as part of the PeopleSoft software.

17 So over time, you know, as Bausch & Lomb grew,
18 we would have an ERP that would have more functionality and
19 more capabilities.

20 And we found that when Oracle acquired
21 PeopleSoft, that that wasn't happening anymore. It seemed
22 like their strategy was moving in a different direction.
23 They talked about a product called Fusion.

24 They couldn't describe it, they didn't know
25 exactly what it was going to look like, but they just

1 painted this picture that was very different from the one
2 that we had -- that we knew when we had purchased the
3 software from PeopleSoft.

4 So it was clear to our executives at Bausch &
5 Lomb that the strategy that Oracle was taking and where
6 they were moving their product was not at all in alignment
7 with what PeopleSoft was going to do and where we were
8 trying to be.

9 So, you know, we knew that that didn't have
10 value to us. Maybe it had value to other customers, but it
11 didn't have value to us, and it wasn't going to help Bausch
12 & Lomb. So that's what I mean by no value or limited
13 value.

14 Q. You mentioned price. Was price the reason that
15 Bausch & Lomb decided to move away from Oracle support?

16 A. Again, price but in the context of value.

17 We would have happily continued to pay the
18 2.2 million if the value was there.

19 On the flip side, we would have -- for less
20 service, if the agreement was going to change and say, hey,
21 instead of the service you were getting before, now you're
22 going to get less service, and we're going to charge you
23 less, and the price was less, you know, that would have
24 been okay too.

25 But there needs to be a match between the

1 service that you're getting and the money that you're
2 paying. You can't pay this much and only get this much
3 service back.

4 Q. Mr. Baggett, I'm going to ask you an important
5 question.

6 If you were getting excellent service from
7 Oracle, would you have decided to go off Oracle support?

8 A. No, no, we would have stayed with Oracle.

9 Q. Mr. Baggett, what's a request for quote?

10 A. When you decide that you're going to do something
11 new, you're either going to purchase a new software package
12 or you're going to get a new service, it's important to
13 help the -- companies that you're going to buy that service
14 from, it's important to help them understand what it is
15 you're asking for.

16 So a request for quote is exactly that, where
17 you outline to potential bidders or vendors, hey, here's
18 what we need, you know, we need tires, we need a car seat,
19 we need steering wheels, and it needs to be leather and it
20 needs to be blue.

21 So you outline what you need, and you put that
22 in a document that's called a request for quote, or an RFQ,
23 and you send it out, and basically you're saying just give
24 me a price. So here's what I need, and tell me what it's
25 going to cost or what you would charge me if we went with

2960

1 you.

2 Q. Mr. Baggett, did there come a time when Bausch &
3 Lomb sent out a request for quote for its support services?

4 A. We did. It was in early 2009.

5 Q. Mr. Baggett, in front of you is a notebook of
6 potential exhibits that we might talk about today, and
7 maybe opposing counsel might talk about as well.

8 So I'd like you first to open that up and turn
9 to tab 435.

10 A. I'm sorry, 435?

11 Q. 435.

12 A. 435. Okay.

13 MR. WEBB: At this time I would offer into
14 evidence PTX 435.

15 MS. DUNN: No objection.

16 THE COURT: It is admitted.

17 (Plaintiffs' Exhibit 435 received into
18 evidence.)

19 BY MR. WEBB:

20 Q. All right. And Mr. Baggett I'm just going to have a
21 few questions about this.

22 What is this exhibit that we're looking at?

23 A. It looks like an email chain that contains the
24 request for quote.

25 Q. All right. Now, let's flip back a few pages to page

1 6.

2 A. Okay.

3 Q. Do you see that?

4 A. I do.

5 Q. And what do we see here?

6 A. Well, this is -- this is the request for quote that
7 I described.

8 Q. All right. So this is the document that you sent
9 out to companies asking for them to bid on your support
10 work.

11 A. Yes.

12 Q. Mr. Baggett, who did you send this to?

13 A. We sent it to three companies. We sent it to
14 Oracle, we sent it to Rimini, and, I apologize, I don't
15 recall the name of the third company. I think it was
16 either Systems Efficiency or Transchannel, but it was
17 another support firm.

18 Q. So another third-party support company?

19 A. Yes.

20 Q. In 2009?

21 A. Yes.

22 Q. Mr. Baggett, you sent this to Oracle?

23 A. We did.

24 Q. I thought you just told the jury that you didn't
25 have a stellar experience with them.

1 A. We didn't.

2 And -- so one of the things that Bausch & Lomb
3 valued was partnerships. We didn't feel we did business
4 with vendors, we felt -- we always tried to do business
5 with partners.

6 And so we -- whenever things weren't going well,
7 we always tried to reconcile a relationship as best we
8 could because it's always -- in the long run, if you can
9 get it to work, it's always less expensive to get it to
10 work with what you have than try to go out and do new
11 things.

12 So although we had made a number of calls into
13 Oracle, and we had complained numerous times, we didn't
14 feel we were getting any response.

15 So our hope was -- this was kind of last-ditch
16 effort that if we included Oracle in a request for quote,
17 first, they would understand that we were at a point where
18 this is serious, we were looking to dissolve the
19 relationship.

20 And it was our hope -- we knew it was a long
21 shot, but it was our hope that they would come back and
22 work with us in a way that would be agreeable or at least
23 better.

24 Q. And is that how they reacted?

25 A. No. They were very -- they were very -- I don't

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1 know what the word -- unhappy with the request for quote.
2 I think they realized at that time that we had made
3 decisions and that we were ready to move on.

4 They were aggressive and, at points, hostile in
5 the conversations back or as we tried to take the
6 discussion forward.

7 Q. Okay. So just to lay the land, you were personally
8 involved in these negotiations with Oracle?

9 A. Oh, I was.

10 Q. And how frequently did you interact with them in
11 this process?

12 A. It varied. When we first sent the RFQ there were a
13 number of phone calls that went back and forth, and
14 certainly I wasn't alone in it. There was a person in
15 purchasing named Brian Schankat.

16 So we were on a number of calls with Oracle
17 early on when they got the request for quote because,
18 again, at first I think they were a little confused as
19 to -- they said, "Hey, we already have a contract, you
20 can't ask us to quote it out again. So you have a
21 contract, just pay your maintenance, and we don't
22 understand this."

23 And we went through and we explained that -- you
24 know, we -- we resaid -- we repeated everything we had said
25 and all the complaints we had made, "we're not getting good

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1 service, we're not happy with where the software is going
2 from a strategy standpoint, it's not helping us, the
3 arrangement isn't working. So it's far too much money for
4 far too little benefit to Bausch & Lomb and we need to do
5 something different."

6 And it was at that point that -- with some
7 silence back, I think there was a week or two where we
8 didn't hear anything back, and then there was some
9 engagement, and then there were a number of calls again,
10 and then -- you know, so it was on and off.

11 Q. You mentioned that you had a hope that when they
12 realized that the relationship was nearing an end, they
13 would become flexible on pricing.

14 A. Yes.

15 Q. Did you actually see any flexibility in pricing?

16 A. No, there was no flexibility offered.

17 Q. In your 20 years in the software business, have you
18 been involved in negotiations like this before?

19 A. Many.

20 Q. In terms of -- how would you characterize this
21 experience with Oracle relative to the other negotiations
22 that you'd been involved in?

23 A. Yeah. So it's been my experience in working with
24 other companies that, you know, it's business, and
25 everybody understands sometimes companies just have

1 different agendas or strategies or what they're trying to
2 do. So, you know, relationships come and go, and that's
3 okay.

4 So in most of my dealings, what I've found is
5 companies are okay with that. We sit down, we have a
6 pretty good conversation on the phone, or we meet in
7 person, and we talk about what we need and what they need,
8 and where the two don't meet, you just go, well, that's
9 okay, and you shake hands and you walk away.

10 And you try to keep -- you always try to keep a
11 good relationship up because you never know when maybe
12 things will change and you'll be back doing business with
13 them again.

14 So that's the normal, and that's the
15 expectation, especially with the bigger players because
16 they work in so many different spaces.

17 So that certainly was our expectation going into
18 this was, you know, even if Oracle wouldn't work with us on
19 price or flexibility, or -- that it would be okay, you
20 know, we would shake hands, we'd walk away, and at some
21 point in the future, you know, maybe we'd be back with them
22 again.

23 That wasn't at all how it played out. Again, I
24 don't know how to describe the discussions other than
25 just -- just hostile.

1 And, you know, Oracle made it very clear that
2 should we continue to pursue this path of walking away from
3 them, I believe the word one of the reps used was regret,
4 that we would -- it was a stupid decision, we would regret
5 the decision.

6 And that's just not -- not common in business
7 dealings like that. So it was an exception, and it stood
8 out.

9 MS. DUNN: Objection, Your Honor. A portion of
10 the last answer was hearsay. Move to strike that portion.

11 MR. WEBB: Present sense impression, Your Honor.

12 THE COURT: The objection is overruled. I think
13 the answer is --

14 BY MR. WEBB:

15 Q. Let's shift away from that piece of the experience,
16 Mr. Baggett.

17 But before we leave, did Oracle ever tell you at
18 that time that Rimini was doing something wrong?

19 A. No.

20 Q. Did they ever tell you at that time don't go to
21 Rimini because they're infringing our copyright?

22 A. No. Again, at that time it had very little to do
23 with Rimini, and the conversations with Oracle were more
24 about the fact that we were leaving Oracle.

25 Q. All right. So did you ultimately make a decision

1 issue for us.

2 So we had a lot of favorable experiences with
3 them where not only would they fix things, but oftentimes
4 they would call me back and say, hey, listen, I can fix
5 this one of three ways. If I fix it this way, here are the
6 pros and cons, if I fix it -- you know, option B, here are
7 the pros and cons. What works best for Bausch & Lomb.

8 And we would talk about it, and they would apply
9 the fix that suited us. So, you know, that was a new
10 experience. That was something I didn't even get out of my
11 own people. Typically, when they looked at something, they
12 just went here's a way to fix it, and they fixed it.

13 So it was a very positive experience. I was
14 very pleased with the service, and they delivered
15 everything they said they were going to, plus they
16 delivered even -- even value beyond that.

17 Q. I want to talk about the speed of responsiveness for
18 both contact and repair. Describe for the jury your
19 experience in those regards with Rimini.

20 A. Again, very positive.

21 So when either myself or one of my developers,
22 somebody on my team would call, they were actually calling
23 that -- the person who was going to fix it directly.

24 So there was nobody in the middle, there was no
25 logging a ticket. There was no -- they just picked up the

1 phone and they would talk to the particular person who
2 worked in that space at Rimini.

3 They would have a quick conversation. That
4 person would log in. And for minor issues, we typically
5 had it fixed in a couple of hours.

6 For issues that were more complicated, they
7 would come back, and they would just tell us, they'd say,
8 okay, we know what it is, we know it's broken, but it's
9 going to take us a day to fix this.

10 And then, you know, they would go and they would
11 work on it, and they were very good at whatever they
12 estimated, they delivered that.

13 There were some rare cases where they called
14 back and said, hey, this is really, really, really
15 complicated, we're going to need time.

16 I think there were even one or two cases where
17 they reached out to somebody else in their own company for
18 additional expertise in different areas to come back.

19 But it was -- the responsiveness and speed was
20 exceptional. It was basically like I had walked down the
21 hall and talked to one of my own guys and said, hey, this
22 is important, I need it fixed, and they dropped everything
23 else they were doing and they just worked on it until they
24 fixed it.

25 Q. All right, Mr. Baggett, did you have occasion to

1 provide any references to other companies for Rimini?

2 A. Sure, I provided a number of references.

3 Q. And when you provide a reference, do you only tell
4 companies positive things?

5 A. No.

6 So a reference is a courtesy to the other
7 company that's considering a purchase. And I'm often in
8 that spot, as well, where I'm actually asking for a
9 reference from another director of IT in another shop.

10 So there's -- you know, the ethical component
11 that I'm having a conversation with somebody else, one of
12 my counterparts at another company, I tell them the good,
13 the bad, the ugly, here's what works, here's what doesn't
14 work, and here's what's going to get you into trouble.

15 And it's not fluff. It's -- it's important that
16 I do that for other people because I need to do that -- I
17 need them to pay that back to me when I call them and ask
18 them, hey, you're running this software over here, how does
19 it work for you guys.

20 And then we talk about the particular situation
21 that the company's in and try to figure out if that would
22 work for them.

23 Q. All right. Mr. Baggett, we're on the homestretch.

24 Back when Bausch & Lomb was considering options
25 for software support, if Rimini Street was not available as

1 an option for whatever reason, would Bausch & Lomb have
2 gone back to Oracle for support?

3 A. No.

4 Q. What would you have done?

5 A. We had already kicked around a number of other
6 options.

7 Although we knew we couldn't support the
8 application itself in its entirety, again, in areas like
9 the payroll fixes, my guys just weren't experts in that,
10 and so at no point did we ever think we were going to do it
11 all ourselves.

12 But outside of HR, we knew we could support the
13 rest of it pretty well, so our plan B or C or D was, if
14 none of these alternatives panned out with Rimini or with
15 the other third party, we were going to support part of the
16 application ourselves, and then, for the HR piece, we were
17 either going to replace it with another piece of software,
18 or we were just going to outsource it to a company like ADP
19 where, you know, they just do the payroll for you.

20 So that was what we had thought through.

21 Q. Now, in assessing the various options that you had
22 considered at the time, where would Oracle rank on the list
23 of options for continuing support?

24 A. Yeah, I -- certainly -- certainly last.

25 And I say that -- I can't imagine a situation

1 where at that point we would have gone back to Oracle.

2 We tried so many times over the years, and we
3 just couldn't reach an agreement with Oracle, which is
4 fine, that's fine. It just -- it just wasn't going to
5 work.

6 So for us, we had a number of other options.

7 Every option would have failed, and I don't see that as a
8 reality.

9 MR. WEBB: All right. Thank you very much,
10 Mr. Baggett.

11 Those are all the questions I have, Your Honor.

12 THE COURT: Thank you.

13 Cross-examination?

14 CROSS-EXAMINATION

15 BY MS. DUNN:

16 Q. Hi, Mr. Baggett. Good afternoon.

17 A. Hi.

18 Q. My name is Karen Dunn, and I'm a lawyer for Oracle,
19 and I'm just going to ask you some questions today.

20 A. Sure.

21 Q. So just to clarify, you're testifying about your
22 experience at Bausch & Lomb?

23 A. That's correct.

24 Q. You're not currently employed there; right?

25 A. I'm not.

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1 Q. Okay. You work at a company called Carestream?

2 A. I do.

3 Q. Do I have that right?

4 And Carestream does health imaging and IT,
5 things like that?

6 A. Yeah, we do, x-ray machines, that kind of thing.

7 Q. Okay. And you know that Carestream is an Oracle
8 customer?

9 A. Sure.

10 Q. And I think Carestream is even partnered with
11 Oracle. Are you aware of that?

12 A. I'm not, but I'd believe it.

13 Q. Yeah.

14 Okay. So let's go back to your history. You
15 left Bausch & Lomb in 2013?

16 A. Yes.

17 Q. Did you leave on your own accord?

18 A. No. Bausch & Lomb was purchased by Valiant, it was
19 acquired by another company. There was already a director
20 of IT there, and they don't need two of us.

21 Q. And when was the last time you spoke to the folks at
22 Bausch & Lomb?

23 A. It varies. I stay in touch with some of the folks.
24 They're not all still at Bausch & Lomb. Many of us left
25 and went different places; so, occasionally.

1 Q. When was the last, do you remember?

2 A. Sure. I had lunch with one of the developers last
3 week.

4 Q. Okay. And does Bausch & Lomb management know that
5 you're here to testify today?

6 A. I -- I'm -- so I don't know. I don't know that
7 Bausch & Lomb -- it's Valiant now, so it's a different
8 company. I don't know what they know.

9 Q. Did you tell the company that you were going to
10 testify today?

11 A. No.

12 Q. Okay. So when I heard you were coming, I did look
13 you up on Rimini Street's website, and they have a
14 testimonial up there from you, and it identifies you as
15 Bausch & Lomb Director of Business Technologies.

16 It doesn't say former. So it suggests that you
17 still work there. Did you know about that?

18 A. I gave the testimonial, yes. I wasn't aware that
19 it's currently up there.

20 Q. Okay. Do you know whether it's been up there since
21 you left the company in 2013? Do you have any idea?

22 A. I don't know.

23 Q. That's up to the folks at Rimini Street?

24 A. Yes.

25 Q. So the website quotes you as saying -- and I think

1 A. For my space in the top accounts, it's no
2 longer a large concern or a bigger issue.

3 PAGE 99:09 TO 99:21 (RUNNING 00:00:29.620)

4 Q. Okay. And I believe on the third bullet
5 point you state that:

6 "Given the current economic environment we
7 wanted to see if we were losing customers to
8 low-cost competitors for service, Rimini
9 Street, for example, or to other software
10 companies in replacing Oracle/SAP/IBM." And
11 you state:

12 "We are finding that is not necessarily the
13 case."

14 Do you see that?

15 A. Yes.

16 Q. Do you think that was accurate?

17 A. Yes.

18 PAGE 99:22 TO 99:23 (RUNNING 00:00:03.535)

19 Q. Do you think that statement would be
20 accurate, as you sit here today?

21 PAGE 99:25 TO 100:14 (RUNNING 00:00:24.575)

22 THE WITNESS: I would assume that that's the
23 case without direct knowledge.

24 Q. BY MS. REDMOND: Okay. How would you get
25 direct knowledge?

1 A. I would have to do this analysis all over
2 again for the entire contract base for this
3 last fiscal year.

4 Q. Okay. And have you done this analysis for
5 the last fiscal contract year yet?

6 A. No.

7 Q. Do you intend to?

8 A. No.

9 Q. Why is that?

10 A. That's the operations group's
11 responsibility.

12 PAGE 129:03 TO 131:25 (RUNNING 00:03:35.465)

13 Q. BY MS. REDMOND: The court reporter has
14 handed you what has been marked as Deposition
15 Exhibit 18.

16 Have you seen Deposition Exhibit 18 before?

17 A. Yes.

18 Q. And what is Deposition Exhibit 18?

19 A. It is an e-mail thread describing some of
20 the problems that XO was running into related
21 to the software and their concerns.

22 Q. Okay. And on the second page of
23 Deposition Exhibit 18 which, for the record,
24 is 152546, I believe it is an e-mail from you
25 to your boss?

1 A. Yes.

2 Q. In part.

3 And I see Alison Taylor copied on this.

4 Was she a manager?

5 A. Yes, she was the manager who worked for
6 me.

7 Q. And then the second paragraph from the
8 bottom, you say, the third sentence in:

9 "It seemed crazy that we don't provide
10 customer support to XO over something like
11 this. Rob feels like we are nickel and
12 diming him and I don't disagree."

13 Do you see that?

14 A. Yes.

15 Q. Do you agree with that statement?

16 A. Yes.

17 Q. And what were you referring to there?

18 A. I was referring to a situation they were
19 having where they were running into a problem
20 that they weren't sure was an Oracle-related
21 problem or a problem with how they set up the
22 software.

23 The solution was we could send a service
24 person out for a cost of somewhere around
25 \$2,000 a day. And Rob's position was it

1 seems kind of crazy that we spend two and a
2 half million dollars and you are going to
3 send someone out here for \$2,000 a day to
4 potentially find a problem that is wrong with
5 your software. And I didn't disagree with
6 him.

7 Q. You go on to say:

8 "It's the perception of awful customer
9 service and support."

10 Do you see that?

11 A. Yes.

12 Q. Do you agree with that sentiment?

13 A. Well, this was Rob's perspective. Rob in
14 XO perceived that they were receiving awful
15 customer service and support. That wasn't
16 necessarily my opinion.

17 Like I said, I thought that he had a point
18 regarding the \$2,000 a day for service, but
19 in terms of the support and service he was
20 getting, I actually think we went above and
21 beyond in his situation. So I certainly
22 didn't think he was getting bad customer
23 service and support.

24 Q. Have you ever had an instance in your
25 experience where you have believed a customer

1 has had bad support and service from Oracle?

2 A. Yes.

3 Q. And what customer was that for?

4 A. Off the top of my head, Siemens comes to
5 mind. There were a few instances where
6 customers received poor support from Oracle.

7 It happens.

8 Q. What happened in the Siemens situation?

9 A. In that situation specifically the
10 customer was logging service requests that
11 were at severity 1 levels and it was taking
12 Oracle an inexcusable amount of time to get
13 back to them and help resolve their issues.
14 It required escalation on our part to get
15 them the service that they needed.

16 Q. Okay. Any other examples that come to
17 mind?

18 A. Not specific ones, no."

19 (End of videotape deposition.)

20 MR. WEBB: Good morning, Your Honor.

21 THE COURT: Mr. Webb?

22 MR. WEBB: At this time defendants rest. Thank
23 you.

24 THE COURT: Thank you.

25 Do the Plaintiffs Oracle have any rebuttal

1 evidence or intend to offer any rebuttal evidence?

2 MR. ISAACSON: We'll be filing our Rule 50
3 motion to you directly, Your Honor, as to certain issues
4 that we think should be foreclosed at this point.

5 But we have a short video we'd like to play in
6 rebuttal. There's some disputes about that. Perhaps this
7 would be a good time to have a break and we can resolve
8 that and then show a very short video.

9 THE COURT: All right.

10 Ladies and gentlemen, what that all means is
11 that Plaintiffs Oracle presented all of their evidence in
12 support of their case. Now defendants have presented all
13 their evidence in support of their defense in their case.

14 And now Plaintiffs Oracle have a final and last
15 opportunity to offer what sounds to be a fairly short
16 video. And upon conclusion of that, you're going to have
17 all the evidence in the case.

18 But to give you a little bit of a heads-up, what
19 that means is that we're going to finish with the evidence
20 today, but they're still are major issues that the Court
21 has to deal with because I, of course, will be giving you
22 instructions on the law before you go in and decide this
23 case.

24 And after I've given you those instructions on
25 the law, you'll hear the closing statements of the -- each

1 side, and at that time you'll be able to go in and decide
2 and discuss the case for the first time and reach your
3 verdict.

4 But what that also means is that we're still
5 quite a ways away from when you're going to have those
6 instructions on the law and be able to deliberate and hear
7 the arguments of counsel.

8 By the time we do the instructions on the law
9 and the arguments of counsel, that's going to consume most
10 of the day.

11 And what needs to be done between now and then
12 will be for the Court to finalize all of the instructions
13 on the law which will be given to you.

14 Those aren't just automatic because I need to
15 hear from both sides regarding those instructions on the
16 law. We need to make sure that everyone understands what
17 the instructions are that I'm giving and that I've
18 considered the input of both parties.

19 So what it means is I will be returning here on
20 Monday to have that session with the counsel and the
21 attorneys. I don't know how long it will take, but I will
22 not bring you in on Monday just because I don't want you
23 sitting out before we're ready to go and then have you
24 going in for deliberations on a very major, complex case
25 with a limited amount of time.